

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE



In re:

Kenneth L. Smoker, L.L.C., and
Kenneth L. Smoker

Respondents

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) P&S Docket No. 15- 0087
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) 15-0088
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) Complaint

There is reason to believe that the Respondents named herein have willfully violated the Packers & Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181 *et seq.*) and, therefore, this complaint is issued alleging the following:

I.

(a) Kenneth L. Smoker, L.L.C., (Respondent Smoker, L.L.C.), is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. Respondent Smoker, L.L.C.'s current mailing address is 3395 South Blackhorse Road, Parkesburg, PA 19365.

(b) At all times material herein, Respondent Smoker, L.L.C. was:

(1) Engaged in the business of a market agency selling livestock in commerce on a commission basis;

(2) Registered with the Secretary of Agriculture as a market agency to sell livestock in commerce on a commission basis; and

(3) Engaged in the business of a livestock dealer buying and selling livestock in commerce for his own account.

(c) Kenneth L. Smoker (Respondent Smoker) is an individual whose current mailing address is in the Commonwealth of Pennsylvania. The address will not be stated in the complaint to protect the privacy of Respondent Smoker, but will be provided to the Hearing Clerk's Office, United States Department of Agriculture, for the purposes of service of this complaint.

(d) At all times material herein, Respondent Smoker was:

- (1) One hundred percent owner of Respondent Smoker, L.L.C.; and
- (2) Responsible for the direction, management, and control of Respondent Smoker, L.L.C.

(e) In a sworn affidavit signed by Respondent on January 17, 2013, Respondent Smoker admitted to buying and selling livestock under the name Kenneth L. Smoker, LLC. He admitted that he is responsible for all major financial and operating decisions of the company, is authorized to sign checks, and has authority to hire and fire all of the employees. A copy of excerpted pages from the affidavit is attached hereto as Exhibit A and incorporated herein by reference.

II.

Respondents purchased livestock and failed to pay the full purchase price of such livestock purchases. In two (2) transactions between the dates of December 29, 2012, and January 3, 2013, Respondents failed to pay \$24,576.50 to Wayne F. Craig and Sons, Shippensburg, PA. Respondents also failed to pay for six (6) transactions with New Holland Sales Stables in New Holland, PA, between April 2, 2012 and July 23, 2012 totaling \$29,964.30. Respondents also failed to pay for five (5) transactions between May 15, 2012 and September

15, 2012 with O'Possum Hollow Livestock in Smithville, TN, totaling \$14,088.55. In six (6) transactions between the dates of December 1, 2012 and January 12, 2013, Respondents failed to pay \$17,821.14 to Barnesville Livestock, LLC, in New Concord, OH. In two (2) transactions between the dates of January 2, 2013 and January 9, 2013, Respondents failed to pay \$2,799.10 to Good's Livestock, Inc., in Denver, PA. In three (3) transactions between the dates of January 7, 2013 and January 8, 2013, Respondents failed to pay \$32,132.63 to the Pennsylvania Farm Show in Harrisburg, PA. In three (3) transactions between the dates of January 11, 2013 and January 15, 2013, Respondents failed to pay \$5,476.15 to Vintage Sales Stables, Inc. in Paradise, PA.

(c) In the sworn affidavit signed by Respondent Smoker on January 17, 2013, which was previously identified as Exhibit A and is incorporated herein by reference, Respondent admitted owing livestock purchases totaling approximately \$400,000 as of January 16, 2013.

III.

Respondent Kenneth L. Smoker L.L.C., under the direction, management, and control of Respondent Kenneth Smoker, during the period of November 20, 2012, through December 31, 2012, failed to properly use and maintain its custodial account, thereby endangering the faithful and prompt accounting of shippers' proceeds and the payments due the owners or consignors of livestock, in that:

(a) As of November 30, 2012, Respondent Smoker, L.L.C. had outstanding checks drawn on its custodial account in the amount of \$21,417.54 and had, to offset such checks, a bank balance in the custodial account of \$2,839.33, current proceeds receivable in the amount of \$62,559.15, and no deposits in transit, resulting in a custodial account shortage in the amount of \$18,578.21.

(b) As of December 31, 2012, Respondent Smoker, L.L.C. had outstanding checks drawn on its custodial account in the amount of \$190,708.48 and had, to offset such checks, a bank balance in the custodial account of \$57,436.82, and no deposits in transit, resulting in a custodial account shortage in the amount of \$133,271.66.

(c) In the sworn affidavit signed by Respondent Smoker on January 17, 2013, which was previously identified as Exhibit A and is incorporated herein by reference, Respondent admitted to a custodial shortage of approximately \$29,000 as of December 31, 2012.

(d) The custodial account shortages described herein were due to Respondents' failure to deposit in the custodial account, within the time prescribed by the regulations, an amount equal to the proceeds receivable for sales of consigned livestock.

IV.

(a) As of November 30, 2012, Respondent Smoker, LLC was insolvent in the amount of \$279,760.61. Respondent had current assets of approximately \$176,058.30 and current liabilities of approximately \$455,818.91, resulting in an excess of current liabilities over current assets in the approximate amount of \$279,760.61.

(b) As of December 31, 2012, Respondent Smoker, LLC had current assets of approximately \$156,741.69 and current liabilities of approximately \$542,785.04, resulting in an excess of current liabilities over current assets in the approximate amount of \$386,043.35.

(c) During the period October 18, 2012 through December 20, 2012, and to the present, Respondents engaged in the business of a market agency selling livestock in commerce on a commission basis, notwithstanding that their current liabilities exceeded their current assets.

(d) In the sworn affidavit signed by Respondent Smoker on January 17, 2013, which was previously identified as Exhibit A and is incorporated herein by reference, Respondent admitted as of September 30, 2012, his self-reported Supplemental Balance Sheet Special Report showed an insolvency balance of \$234,341. He stated that current assets were \$158,122, and current liabilities were \$367,788. Respondent further admitted, "As of December 31, 2012, I am insolvent."

V.

By reason of the facts alleged in paragraphs II, Respondents have willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228(b)).

By reason of the facts alleged in paragraph III, Respondents have willfully violated sections 312(a) and 307 of the Act (7 U.S.C. §§ 213(a) and 208, and section 201.32 of the Regulations (9 C.F.R. § 201.42)).

By reason of the facts alleged in paragraph IV, the financial condition of Respondent Kenneth Smoker, LLC does not meet the requirements of 7 U.S.C. § 204 and Respondents have wilfully violated section 312(a) of the Act (7 U.S.C. § 213(a)).

WHEREFORE, it is hereby ordered that for the purpose of determining whether Respondents have in fact willfully violated the Act and regulations issued thereunder, this complaint shall be served upon the Respondents. The Respondents shall have twenty (20) days following receipt of this complaint to file an answer with the Hearing Clerk, Room 1031 - South Building, United States Department of Agriculture, 1400 Independence Ave., S.W., Washington, D.C. 20250-9200, in accordance with the Rules of Practice governing the proceedings under the Act (7 C.F.R. §§ 1.130 *et seq.*). Allegations not answered shall be deemed admitted for the

purpose of this proceeding. Failure to file an answer will constitute an admission of all the material allegations of this Complaint.

The Grain Inspection, Packers and Stockyards Administration, Packers and Stockyards Program, requests:

(1) That unless the Respondents fail to file an answer within the time allowed, or file an answer admitting all the material allegations of this complaint, this proceeding be set for oral hearing in accordance with the Rules of Practice; and

(2) That such order or orders be issued, including an order requiring Respondents to cease and desist from the violations of the Act and the Regulations found to exist, suspending Respondents as registrants under the Act, and assessing such civil penalties against Respondents, jointly and severally, as are authorized by the Act and warranted in the circumstances.

Done at Washington, D.C.

this 3rd day of March, 2015

Susan B. Keith
Susan B. Keith
Deputy Administrator
Packers and Stockyards Program

Lisa Jabaily
Attorney for the Complainant
Office of the General Counsel—Regulatory Division
Room 2319, South Building
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, D.C. 20250-1400
Telephone: (202) 720-1930